



DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[COE-2021-0005]

Elizabeth River, Naval Station Norfolk Deperming Station, Norfolk, VA; Restricted Area.

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to establish a restricted area in the waters of the Elizabeth River surrounding the Naval Station Norfolk (NSN) Lambert's Point Deperming Station in Norfolk, Virginia. Naval Station Norfolk is the homeport of numerous ships and provides operational readiness support to the U.S. Atlantic Fleet with its facilities. The deperming station is located within the waters of the Elizabeth River and provides magnetic silencing services for military vessels. The proposed restricted area is in waters surrounding the existing facility immediately adjacent to the channel into Norfolk Harbor. The proposed restricted area is necessary to better protect underwater equipment, personnel, and vessels utilizing the facility by implementing a waterside security program.

DATES: Written comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number COE-2021-0005, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov> . Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil. Include the docket number, COE-2021-0005, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO-R (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery / Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2021-0005. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any compact disk you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read comments received, go to www.regulations.gov . All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is proposing to amend its regulations at 33 CFR part 334 for the establishment of a new restricted area in the waters of the Elizabeth River at Naval Station Norfolk (NSN) in Norfolk, Virginia. In a memorandum dated February 14, 2020, the Department of the Navy requested that the Corps modify 33 CFR part 334 to establish a permanent restricted area in the waters of the Elizabeth River surrounding the NSN Lambert's Point Deperming Station in Norfolk, Virginia.

NSN is the homeport of numerous ships and provides operational readiness support to the U.S. Atlantic Fleet with its facilities. The Department of the Navy's request is in response to the possible risks associated with the potential for unfettered access to the deperming station. The deperming station is located within the waters of the Elizabeth River and provides magnetic silencing services for military vessels. This deperming station is the only location capable of servicing an aircraft carrier and the only deperming facility on the east coast of

the United States. The proposed restricted area is in waters surrounding the existing facility immediately adjacent to the channel into Norfolk Harbor. The proposed restricted area is necessary to better protect underwater equipment, personnel, and vessels utilizing the facility by implementing a waterside security program.

Procedural Requirements

a. Regulatory Planning and Review. This proposed rule is not a “significant regulatory action” under Executive Order 12866 (58 FR 51735, October 4, 1993) and it was not submitted to the Office of Management and Budget for review.

b. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.* This rule has been reviewed under the Regulatory Flexibility Act (Public Law 96-354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments).

The Corps certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed restricted area is necessary for security of the deperming station. The restricted area is also necessary to protect underwater equipment, personnel, and vessels utilizing the facility by implementing a waterside security program. Small entities can utilize navigable waters outside of the restricted area. Small entities that need to transit the restricted area may do so as long as the

vessel operator obtains permission from the Commanding Officer, U.S. Naval Station, Norfolk, Virginia and/or other persons or agencies that he/she may designate. This determination is based on the proposed rule governing the restricted area, including the ability for vessel operators to obtain permission from the Commanding Officer, U.S. Naval Station, Norfolk, Virginia and/or other persons or agencies as he/she may designate, to transit the restricted area. Unless information is obtained to the contrary during the comment period, the Corps expects that the economic impact of the proposed restricted area would have practically no impact on the public, any anticipated navigational hazard, or interference with existing waterway traffic. After considering the economic impacts of this restricted area regulation on small entities, I certify that this proposed rule would not have a significant impact on a substantial number of small entities.

c. Review under the National Environmental Policy Act. Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered.

d. Unfunded Mandates Act. This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. The Corps has also found under Section 203 of the Act that small governments will not be significantly and uniquely affected by this rulemaking.

e. Congressional Review Act. The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The Corps will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This proposed rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR Part 334 as follows:

PART 334 -- DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add § 334.296 to read as follows:

§ 334.296 Elizabeth River, Deperming Station, Norfolk, VA, Restricted Area.

(a) The area. The waters within an area beginning at a point latitude 36° 51' 52" N, longitude 76° 20' 04" W; thence easterly to a point at latitude 36° 51' 52" N, longitude 76° 19' 49" W, thence northerly to latitude 36° 52' 06" N, longitude 76° 19' 48" W; thence northwesterly to latitude 36° 52' 12" N, longitude 76° 19' 57" W; thence northwesterly to a point at latitude 36° 52' 15" N, longitude

76° 19' 59" W; thence westerly to latitude 36° 52' 15" N, longitude 76° 20' 04" W, thence to the point of origin. The datum for these coordinates is WGS-84.

(b) The regulations. (1) No vessels other than vessels of the U.S. armed forces and other authorized vessels shall enter the restricted area. Other authorized vessels include vessels and personnel, including contactors and agents, acting on behalf of any federal or state agency or department performing specific work authorized as part of that agency or department's statutory missions or to enforce their respective laws. Authorized vessels may enter anywhere in the restricted area at any time in the furtherance of their authorized operations. This includes, but is not limited to, vessels that are engaged in the following operations: law enforcement; servicing aids to navigation; and/or surveying, maintenance, or improvement of the federal navigational channel.

(2) There shall be no introduction of external magnetic field sources within the area.

(3) No person or vessel shall at any time, under any circumstances, anchor or fish or tow a drag of any kind in the restricted area due to the risk of damage to mission essential underwater equipment, including an extensive cable system located therein.

(4) Orders and instructions issued by U.S. Navy patrol craft or other authorized representatives of the enforcing agency shall be carried out promptly by persons or vessels in or in the vicinity of the restricted area.

(c) Enforcement. The regulations in this section shall be enforced by the

Commanding Officer, U.S. Naval Station, Norfolk, Virginia and such agencies as he/she may designate.

Alvin B. Lee
Director of Civil Works

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